

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES**

IN THE MATTER OF:

██████████
████████████████████
████████████████████

Reg. No.: 2013 60788
Issue No.: 3052
Case No.: ██████████
Hearing Date: November 14, 2013
County: Branch County DHS

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

Upon the request for a hearing by the Department of Human Services (Department), this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, and in accordance with Titles 7, 42 and 45 of the Code of Federal Regulation (CFR), particularly 7 CFR 273.16, and with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, a telephone hearing was held on November 14, 2013 from Detroit, Michigan. The Department was represented by ██████████ Regulation Agent of the Office of Inspector General (OIG).

Respondent did not appear at the hearing and it was held in Respondent's absence pursuant to 7 CFR 273.16(e), Mich Admin Code R 400.3130(5), or Mich Admin Code R 400.3178(5).

ISSUES

1. Did Respondent receive an over issuance (OI) of
 Family Independence Program (FIP) State Disability Assistance (SDA)
 Food Assistance Program (FAP) Child Development and Care (CDC)
 Medical Assistance (MA)
benefits that the Department is entitled to recoup?
2. Did Respondent, by clear and convincing evidence, commit an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving
 Family Independence Program (FIP)? State Disability Assistance (SDA)?
 Food Assistance Program (FAP)? Child Development and Care (CDC)?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Department's OIG filed a hearing request on August 1, 2013, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.
2. The OIG has has not requested that Respondent be disqualified from receiving program benefits.
3. Respondent was a recipient of FIP FAP SDA CDC MA benefits issued by the Department.
4. Respondent was was not aware of the responsibility to report changes in circumstances.
5. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
6. The Department's OIG indicates that the time period it is considering the fraud period is April 27, 2009 through March 31, 2012 (fraud period).
7. During the fraud period, Respondent was issued \$10324 in FIP FAP SDA CDC MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$4771 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FIP FAP SDA CDC MA benefits in the amount of \$5553.
9. This was Respondent's first second third alleged IPV.
10. A notice of hearing was mailed to Respondent at the last known address and was was not returned by the US Post Office as undeliverable.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), and Department of Human Services Reference Tables Manual (RFT). Prior to August 1, 2008, Department policies were contained in the Department of Human Services Program Administrative Manuals (PAM), Department of Human Services Program Eligibility Manual (PEM), and Department of Human Services Reference Schedules Manual (RFS).

☒ The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food Stamp Act of 1977, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 271.1 to 285.5. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10 and Mich Admin Code, R 400.3001 to .3015.

The Department's OIG requests IPV hearings for the following cases:

- FAP trafficking OIs that are not forwarded to the prosecutor,
- prosecution of welfare fraud or FAP trafficking is declined by the prosecutor for a reason other than lack of evidence, and
 - the total OI amount for the FIP, SDA, CDC, MA and FAP programs is \$1000 or more, or
 - the total OI amount is less than \$1000, **and**
 - the group has a previous IPV, or
 - the alleged IPV involves FAP trafficking, or
 - the alleged fraud involves concurrent receipt of assistance (see BEM 222), or
 - the alleged fraud is committed by a state/government employee.

BAM 720 (10/1/13), p. 10.

Intentional Program Violation

Suspected IPV means an OI exists for which all three of the following conditions exist:

- The client intentionally failed to report information **or** intentionally gave incomplete or inaccurate information needed to make a correct benefit determination, and
- The client was clearly and correctly instructed regarding his or her reporting responsibilities, and
- The client has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill reporting responsibilities.

BAM 700 (10/1/13), p. 6; BAM 720, p. 1.

An IPV is also suspected for a client who is alleged to have trafficked FAP benefits. BAM 720, p. 1.

An IPV requires that the Department establish by clear and convincing evidence that the client has intentionally withheld or misrepresented information for the **purpose** of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. BAM 720, p. 1 (emphasis in original); see also 7 CFR 273(e)(6). Clear and convincing evidence is evidence sufficient to result in a clear and firm belief that the proposition is true. See M Civ JI 8.01.

In this case, the Department presented in unsigned report alleging that various regulation agents for the Department had spoken to the Respondent and that she had made an admission against interest, admitting that the Claimant and her boyfriend purchased and prepared food together during the alleged fraud. The Department chose not to present the actual agent who spoke to the Claimant and the report was unsigned and thus was given little evidentiary value as regards establishing intent to defraud. Contrary to the information offered by the Department, the Claimant also filed several applications advising the Department that her boyfriend was a household member and that they did not purchase and prepare food together. Exhibit 1 pp., 13; pp.27. At no time did she hide the fact that she resided with her boyfriend and her daughter who was not his child. The Claimant's boyfriend was not a mandatory group member as the Respondent's daughter was not his child.

The Claimant, upon becoming unable to work advised the Department in a redetermination completed March 7, 2011 that she was reapplying for SSI since having a stroke on June 11, 2010 and "So as of this point I am not working and Travis is paying for all the bills himself." This redetermination notes that her boyfriend is contributing income and the name of his employer. At this point the Department was advised of the facts that the Claimant was potentially receiving unearned income, however, the Claimant further advised the Department that she and her boyfriend did not purchase and prepare food together. Based upon the facts presented it is determined that the Department has not established an IPV was committed by clear and convincing evidence. The Department did not establish by the evidence presented that the Claimant and her boyfriend purchased and prepared food together, nor did the Department verify what the Claimant received by way of assistance from her boyfriend in March of 2011 so as to make a determination of unearned income attributable to the Claimant. Therefore, it is determined that the Department's request for a determination that Claimant committed an intentional program violation cannot be sustained by the evidence presented.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 12. A disqualified recipient remains a member of an active group as long as he lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 13.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period, or except when the OI relates to MA. BAM 720, p. 13. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710 (10/1/13), p. 2. Clients are disqualified for periods of one year for the first IPV, two years for the second IPV, lifetime disqualification for the third IPV, and ten years for a FAP concurrent receipt of benefits. BAM 720, p. 16.

In this case, because the Department did not establish an Intentional Program Violation it is not entitled to any disqualification.

Overissuance

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1.

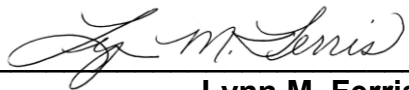
In this case, it is determined that the Department's efforts to establish an over issuance for the entire period from April 27, 2009 to March 31, 2012 is not supported by the evidence. The Department is not entitled to any over issuance for the period prior to the redetermination filed in March 2011, and even though it may have established an over issuance for the period after March 2011, the evidence presented did not establish an over issuance after March 2011 by the preponderance of the evidence. Further the Department's efforts to establish an over issuance for the period after the Claimant advised that she was receiving assistance from her boyfriend at best, establishes that she may have been receiving unearned income after March 2011. No evidence that the Department sought to verify the Claimant's boyfriend's contribution to the household was offered during the hearing. Instead, the Department treated the Claimant's boyfriend's income as earned income. Apparently, for the period in question after the redetermination was filed in March 2011 the Department did not attempt to verify the amount of unearned income that the Claimant was receiving by way of contribution from her boyfriend, and instead used the entire income received by her boyfriend as household income. It is also noteworthy that on the March 2011 redetermination, once again, the Respondent noted that the household did not purchase and prepare food together. Based on the foregoing the Department has not established its right to a finding that an over issuance of Food Assistance benefits has occurred.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. Respondent did did not commit an IPV by clear and convincing evidence.
2. Respondent did did not receive an OI of program benefits in the amount of \$5553 from the following program(s) FIP FAP SDA CDC MA.

The Department is ORDERED to
 delete the OI and cease any recoupment action.



Lynn M. Ferris
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: December 4, 2013

Date Mailed: December 4, 2013

NOTICE: The law provides that within 30 days of receipt of the above Decision and Order, the Respondent may appeal it to the circuit court for the county in which he/she lives.

LMF/cl

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